

## BENEFITS & SERVICES APPEALS VIRGINIA DEPARTMENT OF SOCIAL SERVICES

- ✚ *Fair Hearing. One in which authority is fairly exercised; that is, consistently with the fundamental principles of justice embraced within the conception of due process of law.*
- ✚ *Contemplated in a fair hearing is the right to present evidence, to cross examine, and to have findings supported by evidence. Black's Law Dictionary 537 (5<sup>TH</sup> ED. 1979).*

Preparation is crucial to the presentation of your case at the hearing. The hearing officer is impartial and comes to the hearing knowing only what the agency has presented in its summary of facts. The quality of the presentation by both the local agency and the customer at the hearing is very important to the case. It is important that the participants present all of the information that the hearing officer needs to render a decision. Besides weighing the testimony of the participants and the evidence, the hearing officer will be evaluating the credibility of the witnesses. Do the witnesses appear to be informed? Can they document what they say happened? Is their explanation logical? Do they cite policy to support their position?

The Benefits and Services Section hearing officers have compiled the following list of suggestions to help you prepare to present your case:

### I. Local Agency A. Review the File

- Review the record to make sure no errors were made regarding the facts.
- Review the record to make sure that policy was correctly implemented.
- Check all applicable calculations.

- Check to make sure that all calculations were correctly imputed in the computer.
- If the agency made a mistake, the agency should contact the customer, explain the mistake, restore any lost benefits/services, and explain that the customer may either withdraw the appeal request or proceed with the appeal.
- If the appeal is withdrawn, the withdrawal must be made in writing except that Food Stamp appeals may be withdrawn orally.
- Appeals are of AGENCY actions and, therefore, the local agency may not decline a proposed hearing date because of the unavailability of a specific staff member.

### B. Prepare the Summary of Facts

- The summary of facts should include all **relevant** information such as the exact amount of income, deductions, and other resources used in making the determination of eligibility.
- The summary of facts should include a logical, chronological sequence of the events that lead up to the action taken and assumes that the reader is not familiar with the facts of the case or the program policy.
- If the action taken involves a calculation of benefits, a description should be included in the summary of facts explaining how the benefit amount was calculated.
- Copies of all **relevant** documents – notices, checklists, letters, verifications, evaluation forms, worksheets, assistance plans, the letter offering the customer an informal conference, and any other material – must be attached and submitted with the summary of facts.
- The statement of facts should include a copy of the applicable policy or law and the correct citation for applicable policy or law. The hearing officers prefer that a copy of the

policy or law be attached to the statement of facts.

- The customer should be referred to throughout the summary of facts by their correct title – Mr. or Ms. – and their last name.
- If more than one worker was involved in the action taken, each worker should either prepare a separate summary of facts or the workers should prepare the summary of facts jointly.
- The summary of facts must be signed and sent to (1) the customer, (2) the customer's representative, if any, and (3) the hearing officer.
- The summary of facts and all documentation must be mailed in sufficient time so that the hearing officer and the customer receive it at least five days prior to the hearing.

### C. Preparation for the Hearing

- The local agency must contact the customer and offer to hold an informal conference prior to the hearing. The customer may accept or decline the offer.
- The local agency representative should review the case file to refresh their recollection of the case.
- The local agency representative should focus the preparation and presentation of the case on the issue that the customer has appealed.
- The local agency representative should plan an opening statement, questions for witnesses, and a closing statement.
- The local agency representative should notify the agency staff involved in the action being disputed that they must attend the hearing.

### D. Hearing Protocol

- The local agency should be ready to begin the hearing at the scheduled time with all of

its witnesses present and should call the hearing officer when everyone – including the customer and the customer's witnesses – are present and ready to begin.

- The local agency representative should direct his/her comments to the hearing officer.
- The local agency representative should not engage in argument with the customer or the customer's representative.
- During the presentation of the customer's case, the local agency representative should make notes of rebuttal statements to make when it is the agency's turn to speak.
- While listening to the customer's witness testify, the local agency representative should make notes of questions to ask when it is the agency's turn to question the witness.
- When presenting the agency's case the local agency representative must not add any new information not contained in the agency's summary of facts, unless the agency is responding to an issue raised by the customer at the hearing.
- During the hearing the local agency representative should remember to address everyone present by their appropriate title and their last name.

#### **E. After the Hearing**

- If the hearing officer requests copies of documents during the hearing, the local agency representative should provide copies only of the documents that are requested, and send a copy to the hearing officer, customer, and the customer's representative, if any.
- If the hearing officer's decision directs the agency to take corrective action, the local agency representative must confirm that the appropriate action is taken within ten working days of the date of the decision.

- After the corrective action is taken, the local agency representative must notify the customer and the hearing officer in writing that the agency has complied with the decision.

## **II. The Customer**

### **A. Preparation for the Hearing**

- If the customer is unable to attend the scheduled hearing, the customer must notify either the hearing officer or the local agency as soon as possible prior to the hearing.
- The customer should notify the local agency and the hearing officer if the customer has not received the summary of facts and supporting documentation from the local agency at least five days prior to the hearing.
- The customer may request that the local agency hold an informal conference before the hearing. The informal conference is an opportunity for the customer to (1) present information that the agency may not have known when the action was taken, and (2) to learn the agency's reasoning for its action. The informal conference does not take the place of the hearing.
- If the agency withdraws, rescinds, or modifies its action as a result of the informal conference and restores benefits/services, the customer should notify the local agency whether the appeal will be withdrawn.
- If the customer decides to withdraw the appeal, the withdrawal must be made in writing and a copy must be sent to the hearing officer except Food Stamp appeals may be withdrawn orally.
- The customer should identify all of his/her witnesses and notify them of the time and date of the hearing.
- The customer may select a representative to present the customer's case. If the customer decides to have a representative present the customer's case, the customer should notify

the representative of the time and date of the hearing.

- The customer, or customer's representative, should review all the documentation applicable to the customer's case in preparation for the hearing.
- The customer, or customer's representative, should plan an opening statement, questions for the witnesses, and a closing statement.
- The customer, or customer's representative, should collect all documentary evidence necessary as part of the customer's case to present to the hearing officer at the hearing. Any documents submitted to the hearing officer will be copied for the hearing officer and the local agency and the original documents will be returned.

### **B. Hearing Protocol**

- The customer should be ready to begin the hearing at the scheduled time.
- During the hearing, the customer, or customer's representative, should direct their comments to the hearing officer.
- The customer, or customer's representative, should not engage in argument with the local agency representative.
- While listening to the local agency's case, the customer, or customer's representative, should make notes of rebuttal statements to make when it is the customer's turn to speak.
- While listening to the local agency's witness testify, the customer, or customer's representative, should make notes of questions to ask when it is the customer's turn to question the witness.
- The customer, or customer's representative, should remember to address everyone present by their appropriate title and their last name.